SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket Nos. DRB 24-027, 24-057, and 24-080
District Docket Nos. XIV-2022-0128E; XIV-2022-0184E;
XIV-2022-0272E; XIV-2022-0434E; XIV-2023-0096E;
XI-2023-0013E; XI-2023-0014E; and
XI-2022-0005E

In the Matters of Nabil Nadim Kassem
An Attorney at Law

Decided
July 24, 2024

Certification of the Record

CORRECTED DECISION

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Introduction

We consolidated three matters for review.

On May 24, 2024, DRB 24-027 and DRB 24-057 were before us on certifications of the record filed by the Office of Attorney Ethics (the OAE) and the District XI Ethics Committee (the DEC), respectively, pursuant to R. 1:20-4(f).

Together, the two formal ethics complaints, comprising seven client matters, charged respondent with having violated RPC 1.1(a) (two instances – engaging in gross neglect);[1] RPC 1.3 (two instances – lacking diligence); RPC 1.4(b) (five instances – failing to promptly comply with a client's reasonable requests for information); RPC 1.15(b) (three instances – failing to promptly deliver to the client or third person any funds or other property the client or third person is entitled to receive); RPC 5.1(b) (failing to make reasonable efforts to ensure that a lawyer, over whom the lawyer has direct supervisory authority, conforms to the Rules of Professional Conduct); RPC 5.5(a)(1) (four instances

[1] Although the DEC complaint did not specify which subsection of the RPC 1.1 it intended to charge, the allegations make clear that the DEC intended to charge respondent pursuant to subsection (a). Thus, in our view, respondent had adequate notice that he was charged with engaging in gross neglect of two client matters, in violation of RPC 1.1(a), and not engaging in pattern of neglect requiring the mishandling of three distinct client matters, pursuant to RPC 1.1(b). See R. 1:20-4(b) (entitled "Contents of Complaint" and requiring, among other notice pleading requirements, that a complaint "shall set forth sufficient facts to constitute fair notice of the nature of the alleged unethical conduct").

– engaging in the unauthorized practice of law); RPC 8.1(b) (nine instances – failing to cooperate with disciplinary authorities);[2] RPC 8.4(b) (four instances – committing a criminal act that reflects adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects); RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); and RPC 8.4(d) (four instances – engaging in conduct prejudicial to the administration of justice).

On June 20, 2024, DRB 24-080 was before us on a certification of the record filed by the DEC, pursuant to R. 1:20-4(f). The complaint in that matter charged respondent with having violated RPC 1.3; RPC 1.4(b); RPC 3.2 (failing to expedite litigation); RPC 8.1(b) (two instances);[3] and RPC 8.4(c).

For the reasons set forth below, we determine to recommend to the Court that respondent be disbarred.

[2] Due to respondent's failure to file an answer to the formal ethics complaints, and on notice to him, both the OAE and the DEC amended the respective complaints to include additional RPC 8.1(b) charges.

[3] Due to respondent's failure to file an answer to the formal ethics complaint, and on notice to him, the DEC amended the complaint to include an additional RPC 8.1(b) charge.

Ethics History

Respondent earned admission to the New Jersey bar in 1994 and to the New York bar in 1995. At all relevant times, he maintained a practice of law in Clifton, New Jersey. He has an extensive disciplinary history in New Jersey.

Kassem I

On March 18, 2008, the Court censured respondent, on consent, for his violation of RPC 8.4(b), following his criminal conviction for possession of cocaine, a controlled dangerous substance (CDS), and his successful completion of a pretrial intervention program. In re Kassem, 194 N.J. 182 (2008) (Kassem I).

Kassem II

On December 9, 2021, the Court suspended respondent for three months, retroactive to February 7, 2020, for his violation of RPC 8.4(b), following his conviction for possession of heroin, another CDS. In re Kassem, 249 N.J. 97 (2021) (Kassem II). As a condition precedent to his reinstatement, the Court required respondent to provide proof of his fitness to practice law.

Temporary Suspension For Failing to Cooperate

On March 7, 2023, the Court temporarily suspended respondent for his failure to cooperate with the OAE's investigation underlying DRB 24-027, which involved allegations of engaging in the unauthorized practice of law while suspended.

Kassem III

On June 13, 2023, the Court reprimanded respondent, in consolidated default matters, for his violation of RPC 1.15(d) (failing to comply with the recordkeeping requirements of R. 1:21-6); RPC 8.1(b) (three instances); and RPC 8.4(d). In re Kassem, 254 N.J. 307 (2023) (Kassem III). Specifically, following his three-month suspension in Kassem II, respondent failed to file the R. 1:20-20 affidavit of compliance required of all suspended attorneys and, further, committed recordkeeping infractions.

Kassem IV

On March 28, 2024, we transmitted to the Court our decision in In the Matter of Nabil Nadim Kassem, DRB 23-239 and DRB 23-240 (March 28, 2024) (Kassem IV). In those consolidated default matters, respondent accepted the

representation of two clients in a personal injury action. After a successful arbitration, in which both clients were awarded damages, respondent failed to take any steps to coordinate the payment of those damage awards to his clients. Respondent's inaction deprived both of his clients of their arbitration proceeds for approximately three years. Making matters worse, he also ceased all communication with his clients and ignored their repeated attempts to contact him. Subsequently, he failed to cooperate with both DEC investigations and failed to file verified answers to the formal ethics complaints. We determined that respondent had violated RPC 1.3 (two instances), RPC 1.4(b) (two instances), and RPC 8.1(b) (four instances), and concluded that a three-month suspension was the appropriate quantum of discipline for his misconduct. Those matters are pending before the Court.

To date, respondent remains suspended from the practice of law in connection with Kassem II and the March 2023 temporary suspension.

We now turn to the matters pending before us.

Service of Process

Service of process was proper in each matter.

DRB 24-027 and DRB 24-057

In connection with DRB 24-027, on December 15, 2023, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's home address of record, with an additional copy sent by e-mail.[4] According to the certified mail receipt, on December 21, 2023, the certified mail was delivered to an individual at respondent's home address.[5]

On January 18, 2024, the OAE sent a second letter to respondent's home address of record, by regular mail, with an additional copy sent by e-mail, informing him that, unless he filed a verified answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to charge a willful violation of RPC 8.1(b) by reason of his failure to answer. The e-mail was undeliverable.[6] The regular mail was not returned to the OAE.

[4] The OAE's consolidated complaint addressed respondent's misconduct across five client matters (District Docket Nos. XIV-2022-0128E, XIV 2022-0184E, XIV-2022-0272E, XIV-2022-0434E, XIV-2023-0096E).

[5] The record did not indicate whether the December 15, 2023 regular mail was returned to the OAE.

[6] The OAE sent all electronic mail to respondent's e-mail address of record. Respondent also sent replies from that e-mail address throughout the underlying investigation.

As of January 29, 2024, respondent had not filed an answer to the complaint and the time within which he was required to do so had expired. Accordingly, the OAE certified this matter to us as a default.

In connection with DRB 24-057, on December 20, 2023, the DEC sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's home address of record.[7] According to the United States Postal Service (the USPS) tracking system, the certified letter was returned as "UNCLAIMED – RETURNED TO SENDER." The regular mail was not returned to the DEC. [8]

On January 24, 2024, the DEC sent a second letter to respondent's home address, by certified and regular mail, informing him that, unless he filed a verified answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record would be certified to us for imposition of discipline, and the complaint would be deemed

[7] The DEC's consolidated complaint addressed respondent's misconduct across two client matters (District Docket Nos. XI-2023-0013E and XI-2023-0014E).

[8] New Jersey attorneys have an affirmative obligation to inform both the New Jersey Lawyers' Fund for Client Protection and the Office of Attorney Ethics of changes to their home and primary law office addresses, "either prior to such change or within thirty days thereafter." R. 1:20-1(c). Respondent's official Court record reflected the same address for his office and home, and disciplinary authorities used this address when sending respondent all correspondence described herein.

amended to charge a willful violation of RPC 8.1(b) by reason of his failure to answer. According to the USPS tracking system, the certified letter was returned, unclaimed, on February 24, 2024. The regular mail was not returned to the DEC.

As of February 21, 2024, respondent had not filed an answer to the complaint and the time within which he was required to do so had expired. Accordingly, the DEC certified this matter to us as a default.

On April 1, 2024, the Office of Board Counsel (the OBC) published a notice in the New Jersey Law Journal, stating that we would review the matters underpinning DRB 24-027 and DRB 24-057 on May 24, 2024. The notice informed respondent that, unless he filed a motion to vacate the default by April 22, 2024, his prior failure to answer would remain deemed an admission of the allegations of the complaints.

Respondent did not file a motion to vacate the default.

DRB 24-080

Service of process was proper. On December 14, 2023, the DEC sent a copy of the formal ethics complaint, by certified and regular mail, to

respondent's home address of record. [9] According to the certified mail receipt, on December 21, 2023, the certified mail was delivered to an individual at respondent's home address. The regular mail was not returned to the DEC.

On January 24, 2024, the DEC sent a second letter to respondent's home address, by certified and regular mail, stating that, unless he filed a verified answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record would be certified to us for imposition of discipline, and the complaint would be deemed amended to charge a willful violation of RPC 8.1(b) by reason of his failure to answer. The certified mail was returned "UNCLAIMED." The regular mail was not returned to the DEC.

As of April 9, 2024, respondent had not filed an answer to the complaint and the time within which he was required to do so had expired. Accordingly, the DEC certified this matter to us as a default.

On April 29, 2024, Chief Counsel to the Board sent respondent a letter, by certified and regular mail, to his home address of record, with another copy sent via electronic mail, to his e-mail address of record, informing him that this

[9] The DEC's complaint addressed respondent's misconduct in one client matter (District Docket Nos. XI-2022-0005E).

matter was scheduled before us on June 20, 2024, and that any motion to vacate must be filed by May 20, 2024. On May 9, 2024, the certified mail was returned as "UNCLAIMED." The e-mail was returned as "UNDELIVERABLE." The regular mail was not returned to the OBC.

Finally, on May 6, 2024, the OBC published a notice in the New Jersey Law Journal, stating that we would consider this matter on June 20, 2024. The notice informed respondent that, unless he filed a successful motion to vacate the default by May 20, 2024, his prior failure to answer the complaint would remain deemed an admission of the allegations of the complaint.

Respondent failed to file a motion to vacate the defaults.

We now turn to the allegations of the complaints.

Facts

DRB 24-027 (Certification of the Record Filed by the OAE)

The D.K. Referral (XIV-2022-0128E)

In August 2021, respondent hired D.K. as a paralegal. A few months later, in November 2021, D.K. passed the New Jersey bar examination, which earned him conditional admission to the New Jersey Bar. Consequently, he was required to practice under the supervision of a licensed attorney for a period of

two years. From November 2021 through March 9, 2022, D.K. worked as an attorney under respondent's supervision.

As noted above, on December 9, 2021, in connection with Kassem II, the Court suspended respondent for three months, retroactive to February 7, 2020. The December 9, 2021 Order required respondent to provide, as a condition precedent to reinstatement, proof of his fitness to practice law, as attested to by a mental health professional approved by the OAE. To date, respondent has not been reinstated to the practice of law.

In or around late January 2022, respondent informed D.K. of his suspension.

Throughout D.K.'s employment, despite respondent's suspended status, respondent continued to manage the law practice. On February 24, 2022, D.K. notified the OAE of respondent's misconduct. On April 27, 2022, the OAE docketed the referral for investigation.

The Cruz Matter (XIV-2022-0184E)

At some point between 2016 and 2018, Emely Cruz (Emely), the daughter of and attorney-in-fact for Juan Cruz (Juan), retained respondent to represent her father in connection with a 2016 automobile accident. In or around 2018,

respondent filed a personal injury complaint on Juan's behalf, in the Superior Court of New Jersey, Law Division, Hudson County. In September 2020, the parties settled the case and stipulated to the dismissal of the matter. Allstate, the insurance company, agreed to pay $25,000 to Juan to settle the claim. At the time of the settlement, David A. Nufrio, Esq., was overseeing respondent's law office as an attorney-trustee.[10]

In June 2021, approximately nine months after the parties had settled the litigation, respondent provided Juan with a release, which he signed at respondent's office. On October 13, 2021, respondent deposited the $25,000 settlement in his attorney trust account (ATA). Despite having the signed release, respondent failed to disburse the settlement award to Juan and, as of the date of the formal ethics complaint, the funds remained in respondent's ATA.

At some point, Emely retained Robert Solomon, Esq., on behalf of Juan, to obtain the settlement funds from respondent. On April 21, 2022, Solomon called respondent and left a message. That same date, Solomon sent an e-mail to notify respondent that he had been retained to represent Cruz, and to request a copy of respondent's disbursement ledger to confirm whether respondent had

[10] On February 7, 2020, the Court appointed a temporary attorney-trustee to oversee respondent's practice, for a period of six-months, while respondent sought treatment for addiction. On December 8, 2020, the attorney-trustee was discharged.

issued a check to Juan.

On April 25, 2022, Solomon sent respondent a letter, via e-mail, requesting a copy of the settlement check issued by Allstate, as well as other records related to the case. That same date, Solomon called respondent's office. Respondent neither returned the telephone call nor replied to the e-mail.

On April 26, 2022, Solomon filed an ethics grievance based on respondent's failure to deliver the settlement funds to Juan. On May 31, 2022, the OAE docketed the matter for investigation.

The Gutierrez Matter (XIV-2022-0272E)

On August 24, 2016, Maria Donatiello and her husband, Steven J. Hurley, were involved in a motor vehicle accident. Donatiello's mother, Theresa Gutierrez, retained respondent, in her capacity as an agent under a General Power of Attorney, to represent her daughter. On August 24, 2018, respondent filed a complaint on behalf of Donatiello and Hurley, in the Superior Court of New Jersey, Law Division, Monmouth County.

On October 26, 2020, an associate employed by respondent's law firm settled the case for $100,000, with Donatiello to receive $75,000 and Hurley to receive $25,000. On June 2, 2021, respondent deposited the funds for both

Donatiello and Hurley in his ATA.

On July 26, 2021, Gutierrez made an appointment to meet with respondent on July 28, 2021. Respondent did not attend the meeting and ceased all communication with Gutierrez.

On September 17, 2021, Gutierrez filed an ethics grievance against respondent, alleging that he failed to show up for the scheduled appointment, failed to return her telephone calls, and failed to provide information regarding the status of the case. On January 19, 2022, the matter was docketed by the District Ethics Committee (the DEC) for investigation.

As noted above, on December 9, 2021, the Court suspended respondent for three months in connection with Kassem II. As a condition precedent to his reinstatement, the Court required respondent to provide proof of fitness to practice law. Respondent neither provided the required proof nor sought reinstatement.

On May 4, 2022, respondent issued ATA check #7092, in the amount of $41,189.29, and check #7093, in the amount of $16,065.45, to Gutierrez on behalf of Donatiello.

The Fonesca Matter (XIV-2022-0434E)

Harry Fonesca retained respondent to represent him in connection with a personal injury matter.[11] In December 2021, the matter settled. On December 7, 2021 respondent deposited $35,000 in his ATA on behalf of Fonesca.

As noted above, on December 9, 2021, the Court suspended respondent for three months in connection with Kassem II. Six days later, on December 15, 2021, respondent filed a stipulation for dismissal in the Fonesca matter.

For the next year, Fonesca contacted respondent to obtain a status of the settlement funds. Respondent failed to return Fonesca's calls or to provide any information regarding the status of the funds.

On December 5, 2022, the CPF provided the OAE with the information it had developed during its own investigation of Fonesca's claim, which revealed that respondent had practiced law while suspended. On December 7, 2022, the OAE docketed the matter for investigation.

The Marfitsin Matter (XIV-2022-0096E)

In July 2017, Andrew Marfitsin retained respondent to represent him in

[11] The record did not indicate when Fonesca retained respondent or when respondent filed the complaint with the court.

connection with a personal injury matter. The matter settled for $18,000, with Marfitsin entitled to receive $11,930.52. On July 31, 2021, Marfitsin signed the release and returned same to respondent. On October 13, 2021, respondent deposited the funds in his ATA.

At some point, respondent told Marfitsin that the check for the settlement funds was incorrectly sent out, and that he would issue a new check. On July 12, 2022, respondent inquired as to whether Marfitsin had received the check. On August 17, 2022, respondent told Marfitsin that there was an error sending out the check. In September and December 2022, Marfitsin sent respondent e-mails seeking the status of the funds. Respondent failed to reply to any other requests for status updates.

On February 13, 2023, Marfitsin filed an ethics grievance alleging that respondent had failed to deliver the settlement funds. On February 28, 2023, the OAE docketed the matter for investigation.

Failure to Cooperate with the OAE Investigations

On May 18, 2022, the OAE sent a letter to respondent's home address, by certified and regular mail, informing him that the OAE had docketed the D.K. referral for investigation and setting June 1, 2022 as the deadline for respondent

to provide his written reply to same. The certified mail was not delivered.[12] The regular mail was not returned to the OAE. Respondent failed to reply.

On June 22, 2022, the OAE sent a letter to respondent's home address, by certified and regular mail, informing him that the OAE had docketed the Cruz grievance for investigation and setting June 30, 2022 as the deadline for respondent to provide his written reply to same. According to the USPS tracking system, on June 25, 2022, the certified mail was delivered. The regular mail was not returned to the OAE. Respondent failed to submit a timely reply.

On June 24, 2022, the OAE forwarded a letter to respondent's home address, by certified and regular mail, stating that he failed to reply to the D.K. referral and setting July 5, 2022 as the new deadline for him to provide his written reply. According to the USPS tracking system, on June 29, 2022, the certified mail was delivered. The regular mail was not returned to the OAE. Respondent failed to provide his written reply to the D.K referral by the deadline.

On July 5, 2022, following receipt of a letter of intention to enter an appearance on behalf of respondent, the OAE sent two separate letters to

[12] The record does not indicate why the certified mail was not delivered. The publicly accessible USPS tracking system states "Additional Actions Required contact USPS for more details" in connection with the delivery status of the certified mail.

respondent's counsel, Jack Arseneault, Esq., by e-mail, directing him to provide a letter of representation and respondent's reply to both the D.K referral and the Cruz grievance by July 18, 2022.

On July 19, 2022, Arseneault provided a written reply to the Cruz grievance, stating that respondent had deposited the Cruz settlement funds in his ATA and that the funds remained in the account. Arseneault further stated that, as of April 2022, "respondent was suspended from the practice of law and unable to perform any duties incumbent upon an attorney, including receiving and returning telephone calls, answering emails or writing checks from any of his law firm accounts." The letter enclosed a copy of the settlement check, the deposit receipt, and the release signed by Juan on June 24, 2021.

On July 21, 2022, Arseneault provided a written reply to the D.K. referral, stating:[13]

> From the time of his suspension through the [then] present time [respondent] did not practice law in the "traditional sense[.]" He did not appear in court, meet with clients, respond to client's questions, author documents for clients, advise clients or take other actions that lawyers traditionally perform for clients.
>
> He did however work to protect his clients, pay his employees, including [D.K.], and took other actions in

[13] At some point after sending the July 21, 2022 letter, Arsenault withdrew as respondent's counsel.

> an effort to insure (sic) his clients were protected. He did this while at the same time attempting to locate an attorney(s) to take over his practice until he was reinstated.
>
> [CEx10.][14]

Following receipt of Arsenault's letter, the OAE issued subpoenas for respondent's attorney business account (ABA) and ATA records through November 2022.[15]

On August 30, 2022, the OAE sent a letter to respondent's home address, by certified and regular mail, with another copy sent by e-mail, indicating that the Gutierrez matter had been transferred from the DEC to the OAE.[16] The OAE also requested respondent's client ledger cards and settlement statements, setting September 12, 2022 as the deadline for him to provide a supplemental reply to the Gutierrez grievance.

On November 7, 2022, the OAE sent two separate letters to respondent's home address, by certified and regular mail, with another copy sent by e-mail, informing him of the demand interview scheduled for December 7, 2022 in the

[14] "CEx" refers to the exhibits attached to the OAE's certification of the record.

[15] The OAE's investigation did not reveal clear and convincing evidence that any disbursement from respondent's ATA, during the relevant period, was improper.

[16] The record did not indicate whether the August 30, 2022 letter was delivered.

D.K. and Cruz matters. According to the USPS tracking system, on November 15, 2022, both certified mailings were delivered. The regular mail was not returned to the OAE. The e-mails were not returned as undeliverable.

On December 6, 2022, respondent sent an e-mail to the OAE indicating that his paralegal, Mindy Zeligman, was authorized to request an adjournment of the December 7, 2022 demand interview on his behalf. That same date, the OAE replied, via e-mail, and informed respondent that any adjournment requests must come from him, via telephone. At 9:49 p.m. that same date, respondent sent another e-mail misstating that the demand interview had been adjourned and thanking the OAE for its "courtesy."

On December 7, 2022, the OAE sent an e-mail to respondent stating that the demand interview, in fact, had not been adjourned. The OAE further alerted him that, due to his refusal to comply with the OAE directives, as required by R. 1:20-3(g)(3) and RPC 8.1(b), the OAE intended to seek the appointment of a temporary attorney-trustee for his practice. Respondent neither replied to the December 7, 2022 e-mail nor appeared for the demand interview.

On December 9, 2022, Zeligman sent an e-mail to the OAE, on respondent's behalf, stating that respondent was ill with COVID and that he intended to contact the OAE the following week. That same date, the OAE

replied to respondent and requested supporting medical documentation to explain his failure to comply. On December 16, 2022, respondent left a voicemail for the OAE, claiming that he remained unwell.

On December 15, 2022, the OAE sent a letter to respondent's home address, by certified and regular mail, with another copy sent by e-mail, informing him of the CPF referral in the Fonesca matter and setting December 27, 2022 as the deadline for him to provide his written reply to the referral. According to the USPS tracking system, on December 19, 2022, the certified mail was delivered. The regular mail was not returned to the OAE. The e-mail was not returned as undeliverable.

On December 19, 2022, the OAE sent three separate letters to respondent's home address, by certified and regular mail, with copies sent by e-mail, notifying him of a demand interview scheduled for January 4, 2023 in the D.K., Cruz, and Gutierrez matters.[17] The regular mail was not returned to the OAE. The e-mails were not returned as undeliverable.

On December 29, 2022, the OAE sent three separate letters to respondent's home address, by certified and regular mail, with copies sent by e-

[17] The record did not indicate whether the December 19, 2022 certified letter was delivered.

mail, informing him of a time change for the demand interviewed scheduled for January 4, 2023.[18] The regular mail was not returned to the OAE. The e-mails were not returned as undeliverable.

At 4:35 p.m. on January 2, 2023, respondent left a voicemail for the OAE, claiming that he remained unwell and requesting an adjournment of the January 4, 2023 demand interview.

On January 3, 2023, the OAE sent an e-mail to respondent acknowledging receipt of the adjournment request and requesting that supporting medical documentation be provided by no later than 12:00 p.m. on January 4, 2023. The e-mail was not returned as undeliverable. Respondent neither provided the medical documentation nor appeared for the demand interview.

On January 5, 2023, the OAE sent a letter to respondent's home address, by certified and regular mail, with another copy sent by e-mail, informing him of a demand interview scheduled for January 26, 2023 in the Fonesca matter.[19] The certified mail was returned.[20] The regular mail was not returned to the OAE.

[18] The record did not indicate whether the December 29, 2022 certified letter was delivered.

[19] The January 26, 2023 demand interview was not held due to the medical documentation provided by respondent.

[20] The record did not indicate why the January 5, 2023 certified mail was returned to the OAE.

The e-mail was not returned as undeliverable.

On January 6, 2023, Zeligman replied to the OAE's January 3, 2023 e-mail, attaching a picture of respondent's alleged positive COVID test. She did not provide any supporting medical documentation. That same date, the OAE replied to Zeligman, with a copy to respondent, directing him to provide the medical documentation to support his absence from the December 7, 2022 and January 4, 2023 demand interviews.

On January 26, 2023, the OAE received a letter from respondent's sister, who also is his treating physician, in which she indicated respondent had been ill from December 2022 through January 2023.[21]

On February 22, 2023, the OAE sent a letter to respondent's home address, by certified and regular mail, with another copy sent by e-mail, stating that a demand interview had been scheduled for March 3, 2023 at 10:00 a.m. in the D.K.; Cruz; Gutierrez; and Fonesca matters. The certified mail was returned.[22] The regular mail was not returned to the OAE. The e-mail was not returned as undeliverable. Respondent failed to appear at the March 3, 2023 demand interview.

[21] The January 26, 2023 letter from the treating physician was not included in the record.

[22] The record did not indicate why the February 22, 2023 certified mail was returned to the OAE.

On March 9, 2023, the OAE sent a letter to respondent's home address, by certified and regular mail, with another copy sent by e-mail, informing him of the ethics grievance filed in the Marfitsin matter and setting March 24, 2023 as the deadline for him to provide his written reply to the grievance. According to the USPS tracking system, on March 19, 2023, the certified mail was delivered. The regular mail was not returned to the OAE. The e-mail was not returned as undeliverable.

Given respondent's failure to comply with the OAE investigation and the evidence of his continued practice of law following his suspension, the OAE sought the appointment of a temporary attorney-trustee. The OAE also petitioned the Court to temporarily suspend respondent from the practice of law and to freeze his attorney accounts. On March 13, 2023, the Court temporarily suspended respondent and froze his attorney accounts.

On July 31, 2023, the OAE sent a letter to respondent's home address, by certified and regular mail, with another copy sent by e-mail, informing him of the demand interview scheduled for August 23, 2023 in the Marfitsin matter.[23] The certified mail was returned.[24] The regular mail was not returned to the OAE.

[23] The OAE's July 31, 2023 letter was not included in the record.

[24] The record did not indicate why the July 31, 2023 certified mail was returned to the OAE.

The e-mail was not returned as undeliverable. Respondent failed to appear at the August 23, 2023 demand interview.

Based on the foregoing, the OAE's formal ethics complaint charged respondent with having violated RPC 1.4(b) (three instances) by failing to communicate with the clients regarding the status of their cases and for failing to respond to their reasonable requests for information in the Cruz, Fonesca, and Marfitsin matters; RPC 1.15(b) (three instances) by failing to promptly deliver the settlement funds in the Cruz, Gutierrez, and Marfitsin matters; RPC 5.1(b) by failing to disclose to D.K., a subordinate attorney, that respondent was suspended from the practice of law and could not act in the capacity of a supervising attorney; RPC 5.5(a)(1) (four instances) by engaging in the practice of law while suspended in the D.K.; Gutierrez; Fonesca; and Marfitsin matters; RPC 8.1(b) (six instances) by failing to cooperate with the disciplinary authorities in connection with the D.K.; Cruz; Gutierrez; Fonesca; and Marfitsin matters, and allowing this matter to proceed as a default; RPC 8.4(b) (four instances) for committing the criminal act of engaging in the practice of law while suspended in the D.K.; Gutierrez; Fonesca; and Marfitsin matters; RPC 8.4(c) by making misrepresentations regarding the distribution of the settlement funds in the Marfitsin matter; RPC 8.4(d) (four instances) by engaging in the

practice of law while suspended in the D.K.; Gutierrez; Fonesca; and Marfitsin matters.

DRB 24-057 (Certification of the Record Filed by the DEC)

The Leigh Matter (XI-2023-0013E)

In or around January 2020, Oscar Leigh retained respondent to represent him in a personal injury matter. On January 6, 2020, respondent filed a complaint on Leigh's behalf, in the Superior Court of New Jersey, Law Division, Essex County. From 2021 through May 2023, Leigh made repeated attempts to contact respondent regarding his matter, to no avail. After not hearing from respondent for more than two years, Leigh filed an ethics grievance.

The Barbarisi Matter (XI-2023-0014E)

In or around May 2019, Louis Barbarisi retained respondent to represent him in a personal injury matter. On May 30, 2019, respondent filed a complaint on Barbarisi's behalf, in the Superior Court of New Jersey, Law Division, Morris County. From 2022 through May 2023, Barbarisi made repeated attempts to contact respondent regarding his matter, to no avail. After not hearing from respondent for more than a year, Barbarisi filed an ethics grievance.

Based on the foregoing, the DEC alleged that respondent violated RPC 1.1(a) (two instances) by grossly neglecting the Leigh and Barbarisi matters; RPC 1.3 (two instances) by failing to act with reasonable diligence and promptness in his handling of the Leigh and Barbarisi matters; and RPC 1.4(b) (two instances) by failing to communicate with both clients regarding the status of their cases and by failing to respond to their reasonable requests for information.

Further, although the DEC complaint did not set forth the investigator's specific efforts to contact respondent and secure his cooperation with either investigation, the complaint charged respondent with having violated RPC 8.1(b) (two instances) by failing to cooperate with the DEC investigations underlying the Leigh and Barbarisi matters. Moreover, the complaint was amended to add a third violation of RPC 8.1(b) based on respondent's failure to file a verified answer to the consolidated complaint.

DRB 24-080 (Certification of the Record Filed by the DEC)

The Poth Matter (XI-2022-0005E)

In or around 2019, David Poth retained respondent to represent him in

connection with an automobile accident that occurred on May 23, 2019.[25] As noted above, on December 9, 2021, the Court suspended respondent for three months, retroactive to February 7, 2020.

On January 20, 2022, despite his suspension from the practice of law, respondent filed a complaint on Poth's behalf, in the Superior Court of New Jersey, Law Division, Hudson County.[26] However, respondent filed the complaint after the expiration of the two-year statute of limitations and, as a result, the defendant successfully dismissed Poth's claim.

At some point, Poth also retained respondent to represent him in connection with a slip and fall that occurred in 2020.[27] Despite being retained to handle this matter, respondent failed to file either a tort claim notice or a complaint on Poth's behalf.

Subsequently, Poth made repeated attempts to contact respondent to

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[25] The record did not indicate exactly when Poth retained respondent in connection with the auto accident matter.

[26] Respondent continued to practice law after he was suspended, contrary to RPC 5.5(a)(1) (engaging in the unauthorized practice of law). Although respondent was not charged in the formal ethics complaint with having violated this Rule in connection with the Poth matter, we can consider this uncharged misconduct in aggravation. See In re Steiert, 201 N.J. 119 (2014) (evidence of unethical conduct contained in the record can be considered in aggravation, even though such unethical conduct was not charged in the formal ethics complaint).

[27] The record does not indicate when Poth retained respondent in connection with the slip and fall matter.

obtain a status update on both matters. Respondent, however, failed to answer or return any of Poth's calls. In an effort to reach respondent, Poth masked his telephone number to avoid recognition and finally was able to speak with respondent. Nevertheless, respondent failed to provide the status of either matter or to inform Poth of his suspension from the practice of law in New Jersey.

Sometime in 2022, Poth went to respondent's office to speak with him. Respondent was present and the law office was open for business. Respondent left Poth waiting for six hours and, during that time, repeatedly had his staff attempt to convince him to leave the premises. When it was clear Poth had no intention of leaving, respondent met with him. Respondent finally informed Poth of his December 2021 suspension. Poth filed an ethics grievance against respondent.[28]

On March 1, 2023, the DEC sent a letter to respondent's home address, enclosing a copy of the grievance and directing him to submit a written reply. On March 20, 2023, the DEC sent another letter to respondent's home address, enclosing a copy of the grievance and again requesting a reply. On April 10, 2023, the DEC sent a final letter to respondent's home address. Respondent

[28] The record does not indicate how the DEC forwarded the letter to respondent and does not include a copy of any letters related to the grievance.

failed to submit a written reply.

Based on the foregoing, the DEC's formal ethics complaint charged respondent with having violated RPC 1.3 by failing to act with reasonable diligence and promptness; RPC 1.4(b) by failing to communicate with Poth concerning the status of his cases and for failing to respond to his reasonable requests for information; RPC 3.2 by failing to expedite the litigation; RPC 8.1(b) (two instances) by failing to cooperate with the disciplinary authorities; and RPC 8.4(c).

Analysis

Violations of the Rules of Professional Conduct

Following our review of the records in these consolidated matters, we determine that the facts set forth in the formal ethics complaints support most, but not all, of the charges of unethical conduct. Respondent's failure to file answers to the complaints is deemed an admission that the allegations are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

Notwithstanding that Rule, each charge in the complaints must be supported by sufficient facts to determine that unethical conduct has occurred.

See In re Pena, 164 N.J. 222 (2000) (describing the Court's "obligation in an attorney disciplinary proceeding is to conduct an independent review of the record, R. 1:20-16(c), and determine whether the ethical violations found by [the Board] have been established by clear and convincing evidence"); see also R. 1:20-4(b) (entitled "Contents of Complaint" and requiring, among other notice pleading requirements, that a complaint "shall set forth sufficient facts to constitute fair notice of the nature of the alleged unethical conduct"). We will therefore decline to find a violation of a Rule of Professional Conduct where the facts within the certified record do not constitute clear and convincing evidence that the respondent violated a specific Rule. See, e.g., In the Matter of Philip J. Morin, III, DRB 21-020 (September 9, 2021) at 26-27 (declining to find a charged RPC 3.3(a)(4) (offering evidence that is known to be false) violation based upon insufficient evidence in the record), so ordered, 250 N.J. 184 (2022); In the Matter of Christopher West Hyde, DRB 16-385 (June 1, 2017) at 7 (declining to find a charged RPC 1.5(b) (failing to set forth in writing the basis or rate of the legal fee) violation due to the absence of factual support in the record), so ordered, 231 N.J. 195 (2017); In the Matter of Brian R. Decker, DRB 16-331 (May 12, 2017) at 5 (declining to find a charged RPC 8.4(d) violation due to the absence of factual support in the record), so ordered, 231 N.J. 132

(2017).

We address each certification of the record in turn.

DRB 24-027

Specifically, following our review of DRB 24-027, we conclude that the record clearly and convincingly establishes respondent's violations of RPC 1.4(b) (three instances); RPC 1.15(b) (three instances); RPC 5.1(b); RPC 5.5(a)(1) (four instances); RPC 8.1(b) (six instances); RPC 8.4(b) (four instances); and RPC 8.4(c). We determine to dismiss, however, the charged violations of RPC 8.4(d) (four instances) stemming from respondent's misconduct in the D.K.; Gutierrez; Fonesca; and Marfitsin matters.

RPC 1.4(b) provides that an attorney "shall keep a client reasonably informed about the status of a matter and promptly comply with a client's reasonable requests for information." Here, the evidence clearly and convincingly demonstrates that respondent failed to keep Cruz, Fonesca, and Marfitsin reasonably informed about the status of their respective matters. Making matters worse, respondent also ceased all communication with his clients and ignored their repeated attempts to contact him. Respondent, thus, violated RPC 1.4(b) (three instances).

Next, respondent violated RPC 1.15(b), which requires attorneys "to promptly deliver to the client or third person any funds . . . that the client or third person is entitled to receive." Specifically, between June and December 2021, respondent received the settlement funds in the Cruz, Gutierrez, and Marfitsin matters, yet he failed to deliver those funds to the respective clients. Thus, the record supports the conclusion that respondent violated RPC 1.15(b) (three instances).

RPC 5.1(b) requires a lawyer having direct supervisory authority over another lawyer to make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct. Here, in November 2021, D.K. passed the bar examination and began working as an attorney in respondent's law office. D.K.'s conditional admission to the New Jersey bar, however, required that he be supervised by a licensed attorney for a period of two years. From November 2021 through March 2022, D.K. worked under respondent's supervision. On December 9, 2021, in connection with Kassem II, the Court suspended respondent for three months and, as a result, he was prohibited from practicing law or supervising legal work. Respondent, however, failed to disclose his suspended status to D.K. until January 2022 and continued to supervise D.K. until March 2022, when D.K. resigned. Respondent, thus,

violated RPC 5.1(b) by failing to immediately inform D.K. of the suspension and allowing D.K. to practice law without the requisite supervision by a licensed attorney.

Equally clear on this record is respondent's blatant unauthorized practice of law while he was suspended. Despite his December 9, 2021 suspension in Kassem II, respondent remained in his law office and continued to handle client matters. Specifically, D.K. confirmed that from December 2021 through March 2022, respondent continued to manage the law practice. Moreover, following his suspension, respondent filed a stipulation on behalf of Fonseca, issued an ATA settlement check to Gutierrez, and told Marfitsin that he intended to issue an ATA settlement check.

R. 1:20-20 governs the conduct of attorneys suspended from the practice of law in New Jersey. Subsection (b) of that Rule prohibits a suspended attorney from, among other activities, (1) practicing law "in any form either as a principal, agent, servant, clerk or employee of another;" (2) occupying, sharing, or using "office space in which an attorney practices law;" (3) furnishing "legal services" . . . or "suggest in any way to the public an entitlement to practice law;" (4) drawing "any legal instrument;" and (5) using any bank accounts or checks on which the attorney's name appears as a lawyer or attorney-at-law or

in connection with the words "law office." Further, RPC 5.5(a)(1) prohibits "practic[ing] law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction."

In his July 2022 reply to the D.K. referral, respondent asserted that his conduct did not constitute the practice of law in the "traditional sense" because, in his view, the practice of law includes "appear[ing] in court, meet[ing] with clients, respond[ing] to client's questions, author[ing] documents for clients, advis[ing] clients or tak[ing] other actions that lawyers traditionally perform for clients." Rather, respondent characterized his activities as "work[ing] to protect his clients, pay[ing] his employees, including [D.K.], and [taking] other actions in an effort to insure (sic) his clients were protected."

Respondent's argument, however, fails to recognize that, although the "'practice of law does not lend itself to [a] precise and all-inclusive definition,' it is clear that the 'practice of law' is not limited to litigation, 'but extends to legal activities in many non-litigious fields.'" State v. Rogers, 308 N.J. Super. 59, 66 (App. Div. 1998) (alteration in original) (quoting N.J. State Bar Ass'n v. Northern New Jersey Mortg. Assoc., 32 N.J. 430, 437 (1960)), certif. denied, 156 N.J. 385 (1998). In that vein, "[o]ne is engaged in the practice of law whenever legal knowledge, training, skill, and ability are required." In re

Jackman, 165 N.J. 580, 586 (2000). Most recently, in In re Oury, 256 N.J. 613 (2024), the Court disbarred an attorney for engaging in the unauthorized practice of law, rejecting nearly identical arguments to those made by respondent in this case.

Even applying respondent's narrow (and erroneous) interpretation of what constitutes the practice of law, the record still demonstrates, by clear and convincing evidence, that he engaged in the practice of law. Specifically, respondent violated RPC 5.5(a)(1) by continuing to run his law practice and supervise D.K.; filing the December 15, 2021 stipulation on behalf of Fonesca; issuing the May 2022 ATA settlement check to Gutierrez; replying to Marfitsin's August 2022 inquiry regarding the status of his settlement check; and utilizing his attorney bank accounts through November 2022. Stated bluntly, respondent was operating his law firm, present in the office, as if the Court had never suspended him from the practice of law.

Moreover, respondent violated RPC 8.4(b) by practicing law while suspended, conduct which, in New Jersey, constitutes a criminal offense.[29]

[29] The fact that respondent was not formally convicted of any crime is irrelevant to our finding that respondent engaged in criminal conduct. See In re Gallo, 178 N.J. 115, 121 (2003) (the scope of disciplinary review is not restricted, even though the attorney was neither charged with nor convicted of a crime). See also In re McEnroe, 172 N.J. 324 (2002) (attorney found to have violated RPC 8.4(b), despite not having been charged with or found guilty of a criminal offense).

Specifically, N.J.S.A. 2C:21-22(b) states, in relevant part, that "[a] person is guilty of a crime of the fourth degree if the person knowingly engages in the unauthorized practice of law." Here, respondent engaged in the fourth-degree unauthorized practice of law by continuing to practice law while under a term of suspension. Respondent was on actual notice that R. 1:20-20 prohibited him from engaging in the practice of law in any form by way of the Court's December 2021 suspension Order expressly requiring that he comply with R. 1:20-20.

RPC 8.1(b) requires an attorney to "respond to a lawful demand for information from . . . [a] disciplinary authority." Respondent repeatedly violated this Rule (six instances) by wholly failing to cooperate with the five separate OAE investigations or appear for the OAE demand interviews and, subsequently, failing to file verified answers to the complaint.

Respondent also violated RPC 8.4(c) which prohibits an attorney from engaging "in conduct involving dishonesty, fraud, deceit or misrepresentation." The OAE asserted that respondent violated this Rule by misrepresenting to Marfitsin that he sent the settlement check, but that the check was sent out incorrectly. In July 2022, respondent contacted Marfitsin to inquire if he had received the check, thereby implying that he had, in fact, forwarded the check

to Marfitsin. The OAE asserted that when Marfitsin inquired again about the status of the check, respondent again misrepresented that there was an error in sending out the check. Marfitsin never received the check and respondent then ceased all communication.

A violation of RPC 8.4(c) requires intent. See In the Matter of Ty Hyderally, DRB 11-016 (July 12, 2011). Based on the record before us, there is sufficient evidence to establish that respondent possessed the requisite intent to deceive, specifically, by intentionally misrepresenting or falsely stating to Marfitsin that he sent the check when, in fact, he had not. It is clear from the timeline that respondent was aware when he inquired as to whether Marfitsin had received the check that he had not actually forwarded it to the client and by doing so, respondent violated RPC 8.4(c).

DRB 24-057

We next turn to DRB 24-057. Following our review, we conclude that the record clearly and convincingly establishes respondent's violations of RPC 1.1(a) (two instances); RPC 1.3 (two instances); RPC 1.4(b) (two instances); and RPC 8.1(b) (three instances).

Specifically, the record supports the allegation that respondent violated

RPC 1.1(a), which prohibits lawyers from handling matters entrusted to them in a manner that constitutes gross neglect. This Rule was designed to address "'deviations from professional standards which are so far below the common understanding of those standards as to leave no question of inadequacy.'" In the Matter of Dorothy L. Wright, DRB 22-100 (November 7, 2022) at 17, so ordered, 254 N.J. 118 (2023) (quoting Report of the New Jersey Supreme Court Committee on the Model Rules of Professional Conduct, Section VI Lawyer Competence, Rule 1.1 (June 24, 1983)). RPC 1.3 further requires lawyers to act with reasonable diligence and promptness in representing clients.

Although it is unclear from the record what the disposition ultimately was in the Leigh and Barbarisi matters, the record clearly and convincingly demonstrates that respondent failed to take any action to advance the clients' cases, beyond filing the complaints. Thus, respondent violated RPC 1.1(a) (two instances) and RPC 1.3 (two instances).

Next, respondent violated RPC 8.1(b) in three respects. First, he wholly failed to cooperate with the DEC investigation underlying the Leigh and Barbarisi matters. Respondent violated this Rule a third time by failing to file a verified answer to the complaint.

DRB 24-080

Last, we turn to DRB 24-080. We conclude that the record clearly and convincingly establishes respondent's violations of RPC 1.3, RPC 1.4(b), and RPC 8.1(b) (two instances). However, we determine to dismiss the charged violations of RPC 3.2 and RPC 8.4(c) for lack of clear and convincing evidence.

Specifically, despite having been retained to represent Poth in connection with the car accident that occurred in May 2019, respondent delayed filing the complaint until January 2022, after the statute of limitations had lapsed. Respondent also failed to file either a tort claim notice or a complaint on Poth's behalf in connection with the separate slip and fall incident. Respondent's inexcusable failure to act with diligence caused Poth to forfeit any potential claims he had in either matter. Thus, respondent violated RPC 1.3.

Next, respondent violated RPC 1.4(b) by failing to keep Poth informed about the status of his case. Making matters worse, respondent also ceased all communication with Poth and ignored his repeated attempts to contact him, even going so far as to make Poth wait six hours to meet with him while simultaneously having his staff urge Poth to leave the premises.

Respondent also violated RPC 8.1(b) by failing to cooperate with the DEC's underlying investigation and, subsequently, failing to file a verified

answer to the complaint.

However, there is insufficient evidence to prove, by clear and convincing evidence, that respondent violated the other charged RPCs.

First, RPC 3.2 requires, in relevant part, that a lawyer make reasonable efforts to expedite litigation consistent with the interests of the client. The formal ethics complaint alleged that respondent violated this Rule by delaying the filing of Poth's complaint for more than two-and-a-half years. However, we and the Court consistently have held that RPC 3.2 is inapplicable to circumstances where there is no active litigation to expedite. See In the Matter of Diane Marie Acciavatti, DRB 19-321 (March 31, 2020) (noting that RPC 3.2 is typically reserved for litigation-specific ethics violations, such as failing to comply with case management orders or specific court deadlines), so ordered, 242 N.J. 517 (2020), and In the Matter of M. Blake Perdue, DRB 18-319, 18-320, and 18- 321 (March 29, 2019) (dismissing the RPC 3.2 charge for failing to expedite litigation because the attorney never initiated any litigation in the first place), so ordered, 240 N.J. 43 (2019). Respondent's misconduct in this respect would have been more appropriately addressed via a charge of gross

neglect in violation of RPC 1.1(a).[30]

Next, as previously stated, RPC 8.4(c) prohibits an attorney from engaging "in conduct involving dishonesty, fraud, deceit or misrepresentation" and requires a finding of intent. Although the DEC alleged that respondent violated this Rule, the complaint failed to set forth any specific facts that would constitute an act of deception pursuant to RPC 8.4(c). Thus, based on the record before us, we are unable to conclude that respondent violated RPC 8.4(c).

In sum, we find that respondent violated RPC 1.1(a) (Leigh and Barbarisi matters); RPC 1.3 (Leigh, Barbarisi and Poth matters); RPC 1.4(b) (Leigh; Barbarisi; Cruz; Fonseca; Marfitsin; and Poth matters); RPC 1.15(b) (Cruz, Gutierrez, and Marfitsin matters); RPC 5.1(b) (D.K. matter); RPC 5.5(a)(1) (D.K.; Fonseca; Gutierrez; and Marfitsin matters); RPC 8.1(b) (Leigh; Barbarisi; Cruz; D.K.; Gutierrez; Fonseca; Marfitsin; and Poth matters plus the three defaults); RPC 8.4(b) (D.K.; Fonseca; Gutierrez; and Marfitsin matters); and RPC 8.4(c) (Marfitsin matter).

However, we determine to dismiss the charged violations of RPC 8.4(d) in the D.K.; Gutierrez; Fonesca; and Marfitsin matters. Those charges are based

[30] Although respondent was not charged in the formal ethics complaint with having violated RPC 1.1(a) for his failure to promptly file the complaint on behalf of the client, we can consider this uncharged misconduct in aggravation. See Steiert, 201 N.J. 119

solely on respondent's failure to comply with the Court's Order of suspension in Kassem II, which required that he refrain from practicing law. However, respondent's violation of that Order is fully encompassed by the charged violations of RPC 5.5(a)(1). We further determine to dismiss, for the reasons set forth above, the charged violations of RPC 3.2 and RPC 8.4(c) in the Poth matter. The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Quantum of Discipline

The level of discipline for practicing law while suspended ranges from a lengthy suspension to disbarment, depending on the presence of other misconduct, the attorney's disciplinary history, and aggravating or mitigating factors. See, e.g., In re Gonzalez, __ N.J. __ (2022), 2022 N.J. LEXIS 996 (one-year suspension for an attorney who, during a three-month term of suspension, called the Motor Vehicle Commission (the MVC) on behalf of a friend whose driver's license had been suspended, identified himself as an attorney, and requested information on how to adjourn the friend's MVC hearing; thereafter, the attorney accompanied his friend, in a representative capacity, to the MVC hearing, where the attorney presented an MVC employee with the business card

of another lawyer with an active law license; following the attorney's failure to produce his own driver's license or social security number to confirm his identity, the attorney left the MVC; violations of RPC 3.3(a)(1) (making a false statement of material fact to a tribunal), RPC 3.3(a)(5) (failing to disclose material fact to a tribunal, knowing the omission is reasonably certain to mislead the tribunal), RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal), RPC 5.5(a)(1), and RPC 8.4(c); we weighed the fact that the attorney's misconduct was confined to a singular matter against his prior discipline, which included a 1995 reprimand, a 2012 admonition, and a 2017 three-month suspension); In re Choi, 249 N.J. 18 (2021) (two-year suspension for an attorney who, following his indefinite suspension in New York for federal criminal convictions for money laundering and submitting false statements to federal authorities, represented a client, in New York state court, where he falsely certified that he was admitted to practice in that state; the attorney also maintained a law firm website that improperly claimed that he was admitted to practice in New York; finally, the attorney failed to comply with New York's affidavit of compliance rule for suspended or disbarred attorneys); In re Boyman, 236 N.J. 98 (2018) (three-year suspension for an attorney who, for more than four years following his temporary suspension, represented borrowers

in nineteen, predominately commercial real estate transactions involving the same title company; when the title company discovered the attorney's suspended status, the attorney misrepresented to the title company that he had been reinstated to practice; additionally, despite the OAE's numerous attempts, spanning almost nine months, seeking the attorney's written reply to the ethics grievance, the attorney failed to respond, notwithstanding his acknowledged receipt of the OAE's letters; we weighed, in aggravation, that the attorney allowed the matter to proceed as a default; further, we considered the attorney's 2010 and 2014 censures, also default matters, in which he failed to cooperate with disciplinary authorities; we also weighed the fact that the attorney's misconduct had continued, unabated, for four years, in numerous high-value matters); Oury, 256 N.J. 613 (attorney disbarred for knowingly practicing law while suspended, for nearly eight years, in connection with dozens of client matters; the attorney misrepresented his eligibility to perform legal services to some of the attorneys who had employed him despite his awareness that he was prohibited from practicing law in any form; we considered, in aggravation, the fact that the attorney continued to practice law while suspended, even after the OAE had advised him that his conduct was unethical; in further aggravation, we weighed the attorney's penchant for dishonesty, as evidenced by his prior

criminal conviction for conspiring to defraud and failing to file tax returns); In re Kim, __ N.J. __ (2022), 2022 N.J. LEXIS 1068 (attorney disbarred, in a default matter, for practicing while suspended for almost three-and-a-half years following his temporary suspension, in connection with sixteen small business loan closings before the United States Small Business Administration (the SBA); during each loan closing, the attorney falsely certified that he maintained an active New Jersey law license; the attorney also ignored the OAE's communications, spanning several months, which required him to reply to the SBA's ethics grievance; the attorney had received a prior three-year suspension, in 2020, also for practicing law while suspended in connection with at least two client matters, among other misconduct).

Thus, standing alone, respondent's violation of RPC 5.5(a)(1) warrants at least a one-year suspension. Respondent, however, committed additional serious misconduct across multiple matters, including his utter neglect and mishandling of seven client matters.

Generally, conduct involving gross neglect, lack of diligence, and failure to communicate with clients results in an admonition or a reprimand, depending on the number of client matters involved, the gravity of the offenses, the harm to the clients, the presence of additional violations, and the attorney's

disciplinary history. See In the Matter of Mark J. Molz, DRB 22-102 (September 26, 2022) (admonition for an attorney whose failure to file a personal injury complaint allowed the applicable statute of limitations for his clients' cause of action to expire; approximately twenty months after the clients had approved the proposed complaint for filing, the attorney failed to reply to the clients' e-mail, which outlined the clients' unsuccessful efforts, spanning three months, to obtain an update on their case; the record lacked any proof that the attorney had advised his clients that he had failed to file their lawsuit prior to the expiration of the statute of limitations; in mitigation, the attorney had an otherwise unblemished thirty-five year career), and In re Barron, 2022 N.J. LEXIS 660 (2022) (reprimand for an attorney who engaged in gross neglect in one client matter; lacked diligence in three client matters; failed to communicate in three client matters; and failed to set forth the basis or rate of his fee in one client matter (RPC 1.5(b)); we weighed the quantity of the attorney's ethics violations, and the harm caused to multiple clients, which included allowing a costly default judgment to be entered against two clients; and failing to oppose summary judgment motions, resulting in the dismissal of another client's case; significant mitigating factors included his cooperation, his nearly unblemished career in more than forty years at the bar, and his testimony concerning his mental health

condition).

Attorneys who mishandle a significant number of matters receive terms of suspension ranging from three months to one year. See, e.g., In re Pinnock, 236 N.J. 96 (2018) (three-month suspension for an attorney who mishandled ten client matters: in nine client matters, we concluded that the attorney had engaged in gross neglect, lacked diligence, and failed to communicate with the client; further, the attorney engaged in a pattern of neglect, in violation of RPC 1.1(b), and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in four matters; in aggravation, his misconduct caused significant harm to the clients; in mitigation, the attorney suffered from serious physical and mental health issues; prior reprimand); In re Gruber, 248 N.J. 205 (2021) (six-month suspension for an attorney who committed misconduct in six client matters, including five involving gross neglect; prior censure for similar misconduct; the attorney suffered from mental health issues and was actively pursuing treatment); In re Lawnick, 162 N.J. 113 (1999) (in a default matter, one-year suspension for an attorney who agreed to represent clients in six matters and took no action, despite having accepted retainers in five of them; the attorney also failed to communicate with the clients and to cooperate with the investigation of the ethics grievances).

An attorney's failure to promptly deliver funds to a client or third party to whom the funds belong usually results in an admonition, even if accompanied by other misconduct. See In the Matters of Raymond Armour, DRB 11-451, DRB 11-452, and DRB 11-453 (March 19, 2012) (admonition for an attorney who, in three personal injury matters, neither promptly notified his clients of his receipt of settlement funds nor promptly disbursed their share of the funds; the attorney also failed to properly communicate with the clients; no prior discipline).

Moreover, when an attorney fails to cooperate with disciplinary authorities, and previously has been disciplined, reprimands or censures have been imposed. See In re Howard, 244 N.J. 411 (2020) (reprimand for an attorney who altogether failed to respond to the DEC's four requests for a written reply to an ethics grievance; additionally, during a two-year period, the attorney grossly neglected his client's appeal of an adverse social security administration determination; the attorney also failed to communicate with his client and failed to promptly refund an unearned portion of his fee until the client was forced to seek redress through fee arbitration; however, the record contained insufficient information for us to determine the extent to which the client may have been harmed by the attorney's conduct; the attorney received a prior 2017 censure for

similar misconduct in which he had also failed to cooperate with disciplinary authorities; in mitigation, the attorney stipulated to some of his misconduct), and In re Nussey, __ N.J. __ (2023), 2023 N.J. LEXIS 149 (censure for an attorney who altogether ignored the DEC's October 2018 request for a reply to the ethics grievance; although the attorney eventually filed an answer to the formal ethics complaint, in August 2019, that answer came ten months after the DEC's initial request that he reply to the grievance; the attorney also failed to produce a copy of his client's file as directed until January 2020; moreover, the attorney repeatedly failed to provide his client with a single invoice in a divorce matter, despite her dogged requests that he do so during an eighteen-month period; in aggravation, this matter represented the attorney's third disciplinary proceeding in less than four years; we also found that the attorney had a heighted awareness of his obligations to adhere to the RPCs considering the timing of his prior 2020 reprimand).

Respondent also made a misrepresentation to Marfitsin regarding the status of his settlement funds, in violation of RPC 8.4(c), misconduct which generally results in a reprimand or a censure, even if the misrepresentation is accompanied by other, non-serious ethics infractions. See In re Rudnick, __ N.J. __ (2022), 2022 N.J. LEXIS 258 (reprimand for an attorney who allowed his

client's lawsuit to be dismissed for his failure to respond to interrogatories; thereafter, the attorney failed to attempt to reinstate his client's matter; the attorney also failed to reply to his client's inquiries regarding the case and misrepresented to his client that the entire case had been dismissed for reasons other than the attorney's failure to respond to interrogatories; the attorney's misconduct occurred during a one-year timeframe; in mitigation, the attorney had no prior discipline, accepted responsibility for his misconduct, and fully refunded the client's fee, on his own accord).

Respondent's added violation of RPC 8.4(b), for committing the crime of practicing law while suspended, would not change the quantum of discipline.

In our view, based on the foregoing disciplinary precedent, the baseline discipline for the totality of respondent's misconduct is at least a one-year suspension. To craft the appropriate discipline, however, we also consider mitigating and aggravating factors, and whether progressive discipline is warranted.

There is no mitigation to consider.

There are, however, multiple profound aggravating factors to which we accord significant weight.

First, in addition to having engaged in the unauthorized practice of law

while suspended in connection with the D.K.; Gutierrez; Fonesca; and Marfitsin matters, respondent also filed the complaint in the Poth matter following his December 2021 suspension. Although he was not charged with having violated RPC 5.5(a)(1) in this respect, we accord additional weight to that uncharged misconduct.

In further aggravation, respondent's misconduct caused significant harm to multiple clients. It is well-settled that harm to the client constitutes an aggravating factor. In re Calpin, 217 N.J. 617 (2014). Respondent's prolonged inaction caused multi-year delays in the clients' receipt of their settlement awards. Specifically, respondent deposited the settlement funds on behalf of Cruz, Marfitsin, and Fonesca; yet, for more than two years, those clients still had not received their money. Respondent's prolonged failure to act denied the clients access to their settlement awards.

Moreover, in the Poth matter, despite having been retained in connection with the auto accident that occurred in May 2019, respondent delayed filing the complaint until January 2022, after the statute of limitations had lapsed. Respondent also failed to file, on Poth's behalf, the required torts claim notice or complaint in connection with a separate personal injury claim. Respondent's inexcusable failure to act, after having accepted the representation, extinguished

Poth's potential claims in both matters. Similarly, in the Barbarisi matter, although respondent filed the complaint on the client's behalf, he ultimately walked away from the matter and altogether ignored the client for two years, effectively leaving the client with no representation. Likewise, in the Leigh matter, respondent accepted the representation, failed to take any action on the client's behalf, and for almost three years, ignored the client's efforts to reach him.

We also consider, in further aggravation, respondent's extensive and mounting disciplinary history. Specifically, this matter represents respondent's fifth disciplinary matter before us (including consolidations) and his seventh default matter since June 2023 (comprising nine client matters). The Court has signaled an inclination toward progressive discipline and stern treatment of repeat offenders. In such scenarios, enhanced discipline is appropriate. See In re Kantor, 180 N.J. 226 (2004) (disbarment for abandonment of clients and repeated failure to cooperate with the disciplinary system). To that end, a review of respondent's disciplinary timeline is appropriate considering the overlap in the timing and the nature of the misconduct.

In March 2008, the Court censured respondent, in Kassem I, for his violation of RPC 8.4(b), following his conviction for possession of cocaine. The

OAE and respondent consented to a censure, despite a three-month suspension generally being the appropriate measure of discipline for an attorney's possession of a CDS.[31]

In determining to consent to the lesser discipline, the OAE considered the presence of significant mitigating factors including: respondent, at the time, had no prior discipline; he reported the incident to the OAE, as R. 1:20-13(a)(1) requires, and fully cooperated with disciplinary authorities; he successfully completed pre-trial intervention; and he engaged in rehabilitation efforts, including attending more than 475 meetings of Lawyers Concerned for Lawyers (LCL) and other groups, assuming leadership roles in the LCL, speaking to law students to warn against the dangers of drug use, mentoring a law student, and completing the Lawyers Assistance Program counseling plan.

Despite his rehabilitation efforts following his earlier discipline in Kassem I, in February 2020 respondent reported to the OAE, in February 2020, that he had been arrested, in December 2019, for possession of heroin.[32] The Court, however, did not enter its disciplinary Order in Kassem II until December

[31] See, e.g., In re McKeon, 185 N.J. 247 (2005) (possession of cocaine); In re Holland, 194 N.J. 165 (2008) (possession of cocaine); In re Sarmiento, 194 N.J. 164 (2008) (possession of ecstasy); In re Musto, 152 N.J. 165 (1997) (possession of cocaine and heroin).

[32] Respondent claimed at the time that, although he was sober for many years, he had relapsed after being prescribed Oxycodone for pain following a June 2017 surgery.

9, 2021, at which time the Court suspended respondent for three months, retroactive to February 7, 2020. The Court imposed the condition that respondent provide proof of fitness to practice law prior to his reinstatement.

In June 2023, in Kassem III, the Court reprimanded respondent, in consolidated default matters, for his failure to file the R. 1:20-20 affidavit required of all suspended attorneys following his three-month suspension in Kassem II, and, for recordkeeping infractions.

Most recently, in Kassem IV, we determined that a three-month suspension was the appropriate quantum of discipline, in consolidated default matters, for respondent's lack of diligence and failure to communicate in two client matters, in violation of RPC 1.3; RPC 1.4(b); and RPC 8.1(b). In that matter, from February 2019 to July 2021, respondent ceased all communication with both clients and, for three years, he failed to secure the arbitration awards to which the clients were entitled. Further, respondent's inaction forced the clients to retain new counsel. In determining to impose a three-month suspension, we weighed the harm to the clients, as well as respondent's heightened awareness stemming from his prior discipline, including one consolidated default.

Here, respondent's misconduct involved seven additional client matters

and spanned from June 2019 to December 2022, continuing the pattern of misconduct addressed in Kassem IV. Including the instant seven matters, since June 2023, respondent has committed the following RPC violations:

RPC Violation	**Number of Violations**
1.1(a)	2
1.3	5
1.4(b)	8
1.15(b)	3
1.15(d)	1
5.1(b)	1
5.5(a)(1)	4
8.1(b)	18
8.4(b)	4
8.4(c)	1
8.4(d)	1

An attorney's cooperation with the disciplinary system (and discipline for failing to do so) serves as the cornerstone for the public's confidence that it will be protected from unethical attorneys. Respondent's ongoing behavior reflects a complete disregard for his clients and utter disdain for New Jersey's disciplinary system. Such behavior by an attorney cannot be tolerated. Through this fifth disciplinary matter, respondent has established a penchant for breaching his duties to his clients. In our view, respondent's egregious

mistreatment of his clients, coupled with his unauthorized practice of law while suspended, in addition to his growing disciplinary history, places him over the threshold of disbarment.

Disciplinary precedent supports respondent's disbarment. In In re Spagnoli, 115 N.J. 504 (1989), the attorney accepted retainers from fourteen clients over a three-year period without any intention of performing services for them. He lied to the clients, assuring them that their cases were proceeding. After neglecting their cases to the point that judgments had been entered against his clients, the attorney ignored their efforts to contact him by telephone. To explain his prior failure to appear in court, he lied to a judge. Afterward, the attorney failed to cooperate in the disciplinary process.

The Court adopted our findings and recommendation that Spagnoli be disbarred:

> Respondent's repetitive, unscrupulous acts reveal not only a callous disregard for his responsibilities toward his clients and disdain for the entire legal system . . . . [It also] shows that respondent's conduct is incapable of mitigation. A lesser sanction than disbarment will not adequately protect the public from this attorney, who has amply demonstrated that his "professional good character and fitness have been permanently and irretrievably lost."
>
> [Id. at 517-18 (quoting Matter of Templeton, 99 N.J. 365, 376 (1985)).]

In In re Moore, 143 N.J. 415 (1996), the attorney accepted retainers in two matters and then failed to take any action on behalf of his clients. Although he agreed to refund one of the retainers and was ordered to do so after a fee arbitration proceeding, he retained the funds and then disappeared. The attorney did not cooperate with the disciplinary investigation. In recommending disbarment, we remarked as follows:

> It is unquestionable that this respondent holds no appreciation for his responsibilities as an attorney. He has repeatedly sported a callous indifference to his clients' welfare, the judicial system and the disciplinary process . . . . [We] can draw no other conclusion but that this respondent is not capable of conforming his conduct to the high standards expected of the legal profession.
>
> [In the Matter of John A. Moore, DRB 95-163 (December 4, 1995) at 8-9.]

Similarly, in In re Cohen, 120 N.J. 304 (1990), the attorney, after accepting representation in a matter, failed to file the complaint until after the statute of limitations had expired. He compounded his misconduct by altering the filing date on the complaint to mislead the court and opposing counsel that he had timely filed the complaint. The attorney misrepresented the status of the matter to the client, giving assurances that the case was proceeding. The Court disbarred the attorney, observing that "[w]e are unable to conclude that

respondent will improve his conduct." Id. at 308. See also In re Vincenti, 152 N.J. 253 (1998) (attorney disbarred for his repeated abuses of the judicial process resulting in harm to his clients, adversaries, court personnel and the entire judicial system).

Like the disbarred attorneys in Spagnoli, Moore, and Cohen, respondent has demonstrated a pattern of callous disregard for his responsibilities toward his clients, seven times in this consolidated matter alone. Respondent neglected his clients, forcing some to retain new counsel to resolve their matters, forcing others to wait years for their settlement money, and potentially causing more than one client to forfeit potential claims altogether. After neglecting their cases, respondent ignored their efforts to contact him and, thereafter, altogether failed to cooperate in the disciplinary process.

In addition, between January and June 2019, the OAE attempted to contact respondent in connection with the recordkeeping violations identified in Kassem III, which also proceeded as a consolidated default matter. In February 2020, respondent contacted the OAE to disclose his arrest for heroin possession that served as the basis for the discipline in Kassem II. The discipline imposed in both Kassem I and Kassem II occurred prior to respondent's receipt of the OAE's and DEC's initial contact letters in the instant matters, yet he failed to

cooperate and ignored multiple requests from the disciplinary authorities to obtain his written replies and to schedule demand interviews. Even the filing of the formal ethics complaints failed to secure respondent's compliance. Thus, considering the timeline of his repeated involvement with the disciplinary system, respondent was acutely aware of his obligation under the Rules of Professional Conduct to cooperate with the disciplinary authorities attempting to address his misconduct.

Despite his prior experiences with the disciplinary process, respondent's non-cooperation persisted, and he failed to reform his conduct in any attempt to avoid additional disciplinary actions. It is unmistakable that respondent believes his conduct need not conform with RPC 8.1(b). See In re Brown, 248 N.J. 476 (2021) (we observed that the attorney's obstinate refusal to participate, in any way, in the disciplinary process across five client matters was "the clearest of indications that she has no desire to practice law in New Jersey;" we recommended the attorney's disbarment based, in part, on her utter lack of regard for the disciplinary system with which she was duty-bound to cooperate but rebuffed at every turn).

Respondent's failure to cooperate with multiple OAE and DEC investigations, despite his heightened awareness of his obligation to do so,

justifies an enhancement of the quantum of discipline. When further considering that this is the seventh time, in slightly more than one year, that respondent failed to answer a formal ethics complaint and allowed a matter to proceed as a default, we determine that further enhancement of discipline is warranted. In re Kivler, 193 N.J. 332, 342 (2008) (citations omitted).

In determining that disbarment is appropriate for the totality of respondent's misconduct, we echo our decision in In the Matter of Marc D'Arienzo, DRB 16-345 (May 25, 2017) at 26-27, where we stated:

> Given the contemptible set of facts present in these combined matters, we must consider the ultimate question of whether the protection of the public requires respondent's disbarment. When the totality of respondent's behavior in all matters, past and present, is examined, we find ample proof that . . . no amount of redemption, counseling, or education will overcome his penchant for disregarding ethics rules. As the Court held in another matter, "[n]othing in the record inspires confidence that if respondent were to return to practice [from his current suspension] that his conduct would improve. Given his lengthy disciplinary history and the absence of any hope for improvement, we expect that his assault on the Rules of Professional Conduct would continue." In re Vincenti, 152 N.J. 253, 254 (1998). Similarly, we determine that, based on his extensive record of misconduct and demonstrable refusal to learn from his mistakes, there is no evidence that respondent can return to practice and improve his conduct. Accordingly, we recommend respondent's disbarment.

The Court agreed with our recommendation and disbarred D'Arienzo. In re D'Arienzo, 232 N.J. 275 (2018).

In short, through his repeated misconduct, respondent conclusively has established that he is a detriment to the profession. He has displayed complete disregard for his clients and the disciplinary system and has demonstrated total disinterest in maintaining his law license. He has refused to answer the allegations made against him and has continued to practice law after having been suspended, demonstrating not only indifference for the Rules governing the practice of law in New Jersey, but also contempt for the attorney disciplinary system designed to protect the public. Such behavior by an attorney cannot be tolerated. He is a danger to the public because he is "[in]capable of meeting the standards that must guide all members of the profession." In re Cammarano, 219 N.J. 415, 421 (2014) (citing In re Harris, 182 N.J. 594, 609 (2005)).

Conclusion

In order to confront respondent's continuing disregard of the directives of New Jersey's attorney disciplinary system, his demonstrated willingness to continue practicing law despite his suspended status, and the harm his conduct causes unwitting clients, we conclude he must be removed from the practice of

law. Thus, in order to protect the public and preserve confidence in the bar, we recommend to the Court that respondent be disbarred.

Vice Chair Boyer voted to impose a three-year suspension.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Hon. Mary Catherine Cuff, A.J.S.C. (Ret.),
Chair

By: */s/ Timothy M. Ellis*
Timothy M. Ellis
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matters of Nabil Nadim Kassem
Docket Nos. DRB 24-027, DRB 24-057 and DRB 24-080

Decided: July 24, 2024

Disposition: Disbar

Members	Disbar	Three-Year Suspension
Cuff	X	
Boyer		X
Campelo	X	
Hoberman	X	
Menaker	X	
Petrou	X	
Rivera	X	
Rodriguez	X	
Spencer	X	
Total:	8	1

/s/ Timothy M. Ellis
Timothy M. Ellis
Chief Counsel